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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/601,888	08/09/2000	ARTHUR JING-MIN YANG	P 0290714	3779

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EXAMINER	
HENDRICKSON, STUART L	
ART UNIT	**PAPER NUMBER**
1754	

DATE MAILED: 04/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	Applicant(s)	
09/601,855		
Examiner	Group Art Unit	
Hendrickson	1754	

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

☒ Responsive to communication(s) filed on 1/3/05.

☒ This action is **FINAL.**

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle,* 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

☒ Claim(s) 14, 20, 21, 30-49 is/are pending in the application.

Of the above claim(s) 20, 21, 31, 33, 36-49 is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 14, 30, 32, 34, 35 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).

☐ All ☐ Some* ☐ None of the:

☐ Certified copies of the priority documents have been received.

☐ Certified copies of the priority documents have been received in Application No. _____.

☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____.

Attachment(s)

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Reference(s) Cited, PTO-892

☐ Notice of Informal Patent Application, PTO-152

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Other _____

Office Action Summary

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 36-49 are withdrawn, as admitted by applicant. Furthermore, claims 31 and 33 are as well because they are drawn to the embodiment of treating before gelling. The mere allegation that a generic claim including this embodiment has been added does not mean that this embodiment will be examined. Claim 30 is being examined only to the extent it is drawn to the elected sequence of steps. If applicant is of the belief that claim 30 encompasses the treatment then gelling, then they should explain how claim 30a could recite a silica gel since this means that gelling has already occurred and therefore it is not possible to have treatment before gelling. Additionally, if applicant is of the belief that claims 31 and 33 are properly dependent upon and consistent with claim 30, then they are required to limit claim 30 in their next response to the elected sequence of steps, without adding any other limitations. ***Failure to do so will be taken as acquiescence to the position above that claim 30 is not drawn to the embodiment of treating before gelling.***

Claims 14, 30 and 32 are rejected under 35 U.S.C. 102(a) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Burns et al. 5708069.
The reference teaches in columns 4-5 gellling silica, holding at about 80 degrees and functionalizing. No differences are seen, even though the claimed verbiage is not used by the reference. The overlapping temperature range of Burns renders the claimed range unpatentable. Concerning claim 14, as the target specie is not specified, the Burns reference will anticipate some species but not others, depending upon the desires of the experimentor.

Claims 14, 30, 32, 34 and 35 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Lentz 3122520.
Lentz teaches, particularly in examples 7 and 9, treating silica gel at the claimed temperature in an alcohol medium with a functionalization agent. As no difference is seen in the starting

material or process steps, the claimed structure and capacity is deemed formed. It is noted that ethanol is used in some embodiments; using it is an obvious expedient to dissolve the reagents.

Applicant's arguments filed 1/3/05 have been fully considered but they are not persuasive.

The claims are not limited to the features argued of preserving all the porosity. It is not true that step c of claim 2 was incorporated into claim 30. the claim language is somewhat different. Step a of claim 30 is not seen to differ from 'aging' and does not in fact require the presence of the surface-treating agent. Recitation of mental steps or mechanisms (claim 14) does not make a process patentable. As claim 14 does not recite the target, the claim is open to all functional groups, including those of the references. Nor is the intended use being examined, so arguments thereto are not relevant. No differences have been shown in the results of the process. The arguments concerning alleged superiority of the present product are speculative. Applicant has not submitted a Declaration comparing the present material to those of the references and limited the claims to the unexpected results demonstrated.

The WPI abstract was not found, and has not been considered.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication should be directed to examiner Hendrickson at telephone number (571) 272-1351.

Stuart Hendrickson
examiner Art Unit 1754